

Melbourne Henry

Deposition

April 28, 2006

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

CHARLIE J. DAVIS, JR.,  
Plaintiff,

vs.

ZELMER HYDEN, et al.,  
Defendants.

\_\_\_\_\_)  
NO: A02-0214 CV (JKS)

DEPOSITION OF MELBOURNE HENRY  
FRIDAY, APRIL 28, 2006, 10:27 a.m.  
Anchorage, Alaska

Exhibit 14  
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<p style="text-align: right;">Page 2</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF ALASKA 3 4 CHARLIE J. DAVIS, JR., 5 Plaintiff, 6 vs. 7 ZELMER HYDEN, et al., 8 Defendants. 9 10 NO: A02-0214 CV (JKS) 11 12 13 DEPOSITION OF MELBOURNE HENRY, taken on 14 behalf of Plaintiff, Pursuant to Notice, at MATTHEWS &amp; 15 ZAHARE, 431 West Seventh Avenue, Anchorage, Alaska, 16 before Susan Campbell, Certified Shorthand Reporter 17 for Alaska Stenotype Reporters and Notary Public for 18 the State of Alaska. 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX 2 EXAMINATION BY: PAGE 3 Mr. Matthews 5 4 5 EXHIBITS 6 NUMBER PAGE 7 1 Memorandum and Prisoner Grievance - 20 8 4 pages 9 10 2 Memo and attachments - 6 pages 52 11 12 3 Document entitled "Access to Health 53 13 Care Services" - 6 pages 14 15 4 Document entitled "Health Care 55 16 Organization and Administration" - 17 5 pages 18 19 5 Excerpt from DOC Policies and 55 20 Procedures - 32 pages 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 A-P-P-E-A-R-A-N-C-E-S 2 3 For Plaintiff: MATTHEWS &amp; ZAHARE BY: THOMAS A. MATTHEWS 4 431 West Seventh Avenue Suite 207 5 Anchorage, AK 99501 6 7 For Defendants: STATE OF ALASKA ATTORNEY GENERAL'S OFFICE Department of Law 8 Criminal Division BY: MARILYN J. KAMM 9 P.O. Box 110300 Juneau, AK 99811 10 11 Reported By: Susan Campbell 12 Certified Shorthand Reporter 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 ANCHORAGE, AK, FRIDAY, APRIL 28, 2006, 10:27 a.m. 2 MELBOURNE HENRY, 3 called as a witness on behalf of the 4 Plaintiff, having been duly sworn upon 5 oath by Susan Campbell, Notary Public, 6 was examined and testified as follows: 7 EXAMINATION 8 BY MR. MATTHEWS: 9 Q. Would you state your name for the record, 10 sir? 11 A. Melbourne Walder Henry. 12 Q. If you'd spell all of them for me. 13 A. M-e-l-b-o-u-r-n-e, W-a-l-d-e-r, H-e-n-r-y. 14 Q. Do you use the title of doctor? 15 A. No. 16 Q. Are you a doctor by training? 17 A. I am. 18 Q. A medical doctor? 19 A. No. 20 Q. Let me tell you right to begin with, I ask 21 questions sometimes simply because we need to get 22 answers in a written form that we can use later for 23 trial. 24 A. Yeah. 25 Q. Sometimes I ask questions because I simply</p>

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<p>1 gerontology from the University of Southern 2 California. 3 Q. What year did you get your Ph.D.? 4 A. In 1975. 5 Q. Okay. Let me see if I can put a few years 6 with some of the rest of this. 7 A. Yes. 8 Q. Your work at Alabama Agricultural 9 University -- 10 A. Yes. 11 Q. -- five years, that would have been 12 approximately '93 to '97, '98? 13 A. '98. I left there directly and came up here 14 in '98. 15 Q. Okay. And then the University of Nevada at 16 Reno was the three years before that? 17 A. Yes. 18 Q. Which would have been '90 to '92? 19 A. I started there in -- it's '89 to '92. 20 Q. So your work for the Alaska Department of 21 Health and Social Services would have been what years? 22 A. From '84 to '88. And I was a consultant 23 just on my own for -- until '89 for about a year. 24 Then I left -- I left in '89 to go to Nevada. 25 Q. Your work at Hargraves then would have been</p>	<p>1 A. Thank you. 2 Q. Let me focus you, if I can, on your work 3 with the Department of Corrections in Alaska, 1998 to 4 2003. That's really the focus of my inquiry today. 5 You were the health care administrator? 6 A. I was. 7 Q. Tell me in your words, what does that job 8 entail? 9 A. The job entails reporting to the 10 Commissioner. I was responsible to the Commissioner 11 for the health, physical health and mental health, of 12 the prisoners within the system. I did planning, 13 organizing, coordinating, the budgeting, hiring, 14 reporting and decision-making in that area. 15 Q. Are you -- strike that. 16 Were you involved as health care 17 administrator in the supervision of health care at 18 individual prison facilities within the State of 19 Alaska? 20 A. No. 21 Q. Did you have any oversight responsibilities 22 for the Palmer Correctional Center? 23 A. Yes. 24 Q. Explain, please. 25 A. The health personnel at Palmer ultimately</p>
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<p>1 what years? 2 A. Hargraves would be '80 -- let's see. '80 -- 3 well, let me -- 4 Q. Just approximately. 5 A. Yeah. Approximately '80, '81. And the work 6 with the State of West Virginia with the Health 7 Department there would be from '78 to '80, right. 8 Because I left there and went to Jamaica. So reverse 9 those. 10 Q. And the Appalachian Regional Hospital would 11 have been -- 12 A. '68 to '72. 13 Q. Okay. You got your Ph.D. at USC in 1975? 14 A. Yes. 15 Q. And your Master's also from USC? 16 A. Yes. 17 Q. What year was that? 18 A. The same year. 19 Q. 1975? 20 A. Yes. 21 Q. And the MSW from Portland? 22 A. '66. 23 Q. And the Bachelor's also in Oregon? 24 A. '64. 25 Q. '64. Quite an illustrious career.</p>	<p>1 reported to me. 2 Q. Could you explain the chain of command to 3 me? 4 A. Each facility -- 5 Q. Focussing just on the medical side. 6 A. On the medical side of it. 7 Q. Right. 8 A. We had a medical director. The medical 9 director reported to me. The medical director was 10 responsible for the medical staff in each facility. 11 At Palmer, we would have physician assistants, nurses, 12 aides and so on. And the PA was in charge. And the 13 PA reported to the physician, medical director. And 14 that person reported to me. 15 Q. Okay. During the years that you were 16 health care administrator, who was the medical 17 director? 18 A. Oh, what's his name? I can't think of it 19 now. 20 Q. Was there more than one medical director 21 during that time period? 22 A. Yes. One was Robertson. And before 23 Robertson, there was another. I -- I can't recall his 24 name. I'm getting old. I'm sorry. 25 MS. KAMM: I can't either.</p>

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<p>1 with oversight responsibility?</p> <p>2 <b>A. It would have been a single individual.</b></p> <p>3 Q. Okay.</p> <p>4 <b>A. And if the position were not filled, we</b></p> <p>5 <b>would have used any of those consultants to be the</b></p> <p>6 <b>medical -- to make the medical decisions that had to</b></p> <p>7 <b>be made.</b></p> <p>8 Q. What involvement would you have had directly</p> <p>9 in making medical decisions?</p> <p>10 <b>A. None.</b></p> <p>11 Q. I mean no disrespect by this question. But</p> <p>12 do you have the training or the ability from a medical</p> <p>13 standpoint to make medical decisions?</p> <p>14 <b>A. Absolutely not.</b></p> <p>15 Q. So that wasn't part of your responsibility.</p> <p>16 <b>A. It was not.</b></p> <p>17 Q. It was not something you undertook.</p> <p>18 <b>A. No.</b></p> <p>19 Q. If there were a question about the medical</p> <p>20 care of an inmate at one of the institutions, how</p> <p>21 would you as the health care administrator address</p> <p>22 that?</p> <p>23 <b>A. We would -- if I were not satisfied that the</b></p> <p>24 <b>prisoner was getting services, although a medical</b></p> <p>25 <b>person said he was, we would use one of our</b></p>	<p>1 <b>A. No.</b></p> <p>2 Q. Know anything about him?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Know anything about his medical condition?</p> <p>5 <b>A. Well, just what I've read.</b></p> <p>6 Q. And that would include materials that you've</p> <p>7 been provided in this case?</p> <p>8 <b>A. Yes. That was provided to me in this case.</b></p> <p>9 <b>That's the first time I heard about him.</b></p> <p>10 MR. MATTHEWS: Mark that as number 1,</p> <p>11 please.</p> <p>12 (Exhibit 1 was marked.)</p> <p>13 BY MR. MATTHEWS:</p> <p>14 Q. Take a look at the documents that we have</p> <p>15 marked as Exhibit 1, if you would, please.</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Do you recognize that packet of materials?</p> <p>18 <b>A. Yes. I recognize this as coming from the</b></p> <p>19 <b>Department.</b></p> <p>20 Q. You recognize the cover sheet?</p> <p>21 <b>A. I recognize my signature.</b></p> <p>22 Q. Okay. Tell us what this is, to the extent</p> <p>23 you remember it.</p> <p>24 <b>A. This would have come before the Medical</b></p> <p>25 <b>Advisory Committee meeting on -- its regular weekly</b></p>
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<p>1 consultants as a referee. And usually, that worked</p> <p>2 through the Medical Advisory Committee.</p> <p>3 Q. And explain for me, if you would, what the</p> <p>4 Medical Advisory Committee was.</p> <p>5 <b>A. Medical Advisory Committee comprised a group</b></p> <p>6 <b>of medical persons, including two contract physicians</b></p> <p>7 <b>and physician assistants, nurses, who met once weekly</b></p> <p>8 <b>to go over cases that were not resolved at the local</b></p> <p>9 <b>level.</b></p> <p>10 Q. Was that a clinical meeting, so to speak?</p> <p>11 <b>A. It was a clinical meeting.</b></p> <p>12 Q. Are there records kept of the Medical</p> <p>13 Advisory Committee?</p> <p>14 <b>A. Oh, yes.</b></p> <p>15 Q. Are they kept in the form of minutes?</p> <p>16 <b>A. Yes. And usually whatever decisions were</b></p> <p>17 <b>made there, I would -- I acted as sort of secretary to</b></p> <p>18 <b>this thing. I signed off on them. So a prisoner</b></p> <p>19 <b>would get a response from -- from the Medical Advisory</b></p> <p>20 <b>council through my signature.</b></p> <p>21 Q. Okay. That helps. Let me focus you, if I</p> <p>22 can, on an inmate at Palmer, Charlie Davis. Is that a</p> <p>23 name that's known to you?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Do you know who he is?</p>	<p>1 <b>meeting, in which the medical staff would go over the</b></p> <p>2 <b>grievance and would make a decision. And this</b></p> <p>3 <b>decision was conveyed back to the grievant.</b></p> <p>4 Q. This cover sheet is dated September 5th,</p> <p>5 2002, correct?</p> <p>6 <b>A. Yes, it is.</b></p> <p>7 Q. And that bears your signature on the left</p> <p>8 next to your name?</p> <p>9 <b>A. It does.</b></p> <p>10 Q. You mentioned a little while ago in your</p> <p>11 testimony about the Medical Advisory Committee --</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. -- that you would act as secretary for the</p> <p>14 group --</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. -- convey the decision, if you will, of the</p> <p>17 Advisory Committee back to the grievant.</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Is what we're looking at in Exhibit 1, this</p> <p>20 top page, is that what you were talking about earlier?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. So this page, if you will, represents the</p> <p>23 decision of the Medical Advisory Committee concerning</p> <p>24 a particular grievance.</p> <p>25 <b>A. Yes.</b></p>

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<p>1 Q. Not just your individual decision; is that</p> <p>2 true?</p> <p>3 A. Oh, absolutely true, yes. And when you say</p> <p>4 my decision, this is the medical staff decision. And</p> <p>5 this response was prepared by a medical person. But</p> <p>6 matters going out of the Department would go under my</p> <p>7 signature, the administrator.</p> <p>8 Q. Can you tell me then what involvement you</p> <p>9 had specifically in the decision to deny this</p> <p>10 grievance?</p> <p>11 A. The only decision I would have in these is</p> <p>12 to determine whether or not agency policy was being</p> <p>13 followed. But in terms of the medical aspect of the</p> <p>14 decision-making, I would have no say so.</p> <p>15 Q. Let me make sure I understand this cover</p> <p>16 sheet, at least.</p> <p>17 A. Yes.</p> <p>18 Q. Is it fair to say that this is a document</p> <p>19 which is prepared by medical staff simply for your</p> <p>20 signature?</p> <p>21 A. Yes.</p> <p>22 Q. In effect, you are simply the scrivener?</p> <p>23 A. Except if there were some matters that would</p> <p>24 be contrary to policy, then I would say something</p> <p>25 about that.</p>	<p>1 A. No, sir.</p> <p>2 Q. Do you know whether or not he had a serious</p> <p>3 medical condition?</p> <p>4 A. No, sir.</p> <p>5 Q. Do you know whether or not Mr. Davis was</p> <p>6 receiving adequate medical care at Palmer Correctional</p> <p>7 Center?</p> <p>8 A. I do not know that.</p> <p>9 Q. Are you in a position to say one way or the</p> <p>10 other whether or not the medical care Mr. Davis</p> <p>11 received at Palmer was adequate?</p> <p>12 A. No, sir.</p> <p>13 Q. Are you in a position to say one way or the</p> <p>14 other whether the medical care that Mr. Davis received</p> <p>15 at Palmer was in compliance with Department</p> <p>16 guidelines?</p> <p>17 A. I'd say yes.</p> <p>18 Q. How is it that you know that?</p> <p>19 A. Because we hired qualified people to deliver</p> <p>20 the services. And we assumed that if they are doing</p> <p>21 their job -- but the medical director would be</p> <p>22 supervising those people. And if they were not doing</p> <p>23 their job, sooner or later, I would have heard of it.</p> <p>24 And we have the grievance process. So if a person</p> <p>25 believes he or she is not receiving services, then</p>
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<p>1 Q. Was a portion of this particular grievance</p> <p>2 directed to medical policy, in your view?</p> <p>3 A. I imagine all grievances would pertain to</p> <p>4 medical policy, one way or the other.</p> <p>5 Q. I guess what I'm trying to figure out is</p> <p>6 whether you had a specific role in the denial of this</p> <p>7 grievance or were simply signing off on the medical</p> <p>8 decision.</p> <p>9 A. I was simply signing off on this.</p> <p>10 Q. Do you have any memory as you sit here today</p> <p>11 of this particular grievance?</p> <p>12 A. No, sir.</p> <p>13 Q. Any idea what the underlying beef was?</p> <p>14 A. No. I -- as I said, I didn't even know this</p> <p>15 guy. I never -- you know, in any given meeting, we</p> <p>16 probably look at 20 of these things. And probably</p> <p>17 some outstanding one would jump out at you. But</p> <p>18 ordinarily, no.</p> <p>19 Q. Do you know, for instance, how old Mr. Davis</p> <p>20 was?</p> <p>21 A. No, sir.</p> <p>22 Q. Do you know what his medical condition was?</p> <p>23 A. No, sir.</p> <p>24 Q. Do you know why he was complaining about his</p> <p>25 medical care?</p>	<p>1 they would go up the chain of the grievance.</p> <p>2 Q. Isn't that what happened here?</p> <p>3 A. Yes. That's what -- I imagine that's what</p> <p>4 he said. But the substance of that, I would not know</p> <p>5 if he were or were not receiving, since I'm not a</p> <p>6 physician. If some -- if a physician or medical</p> <p>7 person told me that, I would then know.</p> <p>8 Q. So you would have to rely upon a medical</p> <p>9 person to tell you that Mr. Davis' care was adequate</p> <p>10 or inadequate, true?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know whether or not you did that in</p> <p>13 this case?</p> <p>14 A. No, sir. I don't. I don't know.</p> <p>15 Q. In looking at this packet, the grievance</p> <p>16 that was appealed was dated June the 27th, 2002, if</p> <p>17 you look at the last page.</p> <p>18 A. Yes.</p> <p>19 Q. And the decision which you sent back is</p> <p>20 dated September 5th, 2002, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Are you able to tell me what happens to that</p> <p>23 grievance in the intervening time?</p> <p>24 A. The 6/27/02 decision?</p> <p>25 Q. Yes.</p>

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1 A. So June, July, August, September. So there  
2 is probably like a three-month delay here you're  
3 asking.

4 Q. That's -- that's what it appears from the  
5 paperwork that I've seen. What I'm trying to  
6 understand is what happens in that time period.

7 A. I -- I cannot say.

8 Q. Okay. Is there some record of decision  
9 concerning a grievance appeal, like the first page,  
10 other than this letter back to the inmate?

11 A. Yes. When -- when a decision comes in to my  
12 office, it is recorded and the secretary sets a  
13 meeting with this committee. And usually, it's done  
14 within a certain number of days. So --

15 Q. In fact, the policy sets a certain number of  
16 days for --

17 A. Indeed. So I cannot say what happened from  
18 the 27th until, you know, my letter of this date. One  
19 would have to go back and see when it was logged in  
20 and when the decision was made.

21 Q. Would there be paperwork documenting the  
22 steps along the way?

23 A. Yes. There would be.

24 Q. And what paperwork would we expect to see?

25 A. The grievance and the grievance response.

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1 And we have -- I believe there was a person who was in  
2 charge of grievances. And that person would  
3 prioritize these things or send them through the  
4 system at -- to the appropriate persons within the  
5 system. And I guess at each of those stages, it would  
6 be documented.

7 Q. Would all of that documentation eventually  
8 make its way to the Medical Advisory Committee for its  
9 review in making a final determination?

10 A. Yes. There was a chart that we prepared  
11 with all of this stuff.

12 Q. In this response to the grievance appeal  
13 that you have in front of you, second sentence says  
14 "Your grievance is for the facility where you are  
15 housed not having adequate medical staff to meet your  
16 medical needs," correct?

17 A. I didn't understand the question, please.

18 Q. I'm just trying to make sure -- the second  
19 sentence of that letter --

20 A. Yes.

21 Q. -- it reads "Your grievance is for the  
22 facility where you are housed not having adequate  
23 medical staff to meet your medical needs," correct?

24 A. Yes. That's what it says.

25 Q. And the findings in the first sentence say

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1 "Your grievance states that you have a heart condition  
2 and serious medical condition that the officers are  
3 not trained to recognize and properly manage during  
4 the hours that the medical department is not open."

5 A. Yes.

6 Q. Correct?

7 A. Yes.

8 Q. Do you know what medical staff there was  
9 available to treat someone with a heart condition and  
10 serious medical condition during the hours that the  
11 medical department was not open?

12 A. I guess this individual -- this statement  
13 refers to what was contained in the grievance. I  
14 don't -- I don't know that this statement is saying  
15 that we, the medical committee, have found that you  
16 have a serious medical condition, et cetera. I don't  
17 know that is what we're saying. We're responding to  
18 his words in his grievance.

19 Q. You don't know whether he had a serious  
20 medical condition or not?

21 A. I don't know, no.

22 Q. That's outside your area of expertise?

23 A. Yes, it is. I could have learned about it.

24 But in -- in this instance, if the medical folks had  
25 determined that his condition were serious enough to

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1 warrant a higher level of care facility, he would have  
2 been transferred to a place where there was 24-hour  
3 care.

4 Q. Was such a facility available within the  
5 Department of Corrections?

6 A. Yes. In Anchorage, you'd have 24-hour care.

7 Q. If we look at the third page of this  
8 grievance, there's a section entitled Superintendent's  
9 Findings and Determination.

10 A. Uh-huh.

11 Q. Is that a portion of the grievance that you  
12 recognize?

13 A. It's here, but I don't recognize it as such.

14 Q. Does each grievance require the  
15 superintendent of the facility to essentially sign off  
16 on --

17 A. Yes.

18 Q. -- the grievance before it can get to your  
19 level, correct?

20 A. Yes, yes.

21 Q. In this case, didn't the superintendent of  
22 that facility suggest that Mr. Davis be transferred to  
23 a facility with a full-time medical staff?

24 A. Yeah. He's saying that. But, you know, I  
25 think this is an inappropriate response of the

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<p style="text-align: right;">Page 30</p> <p>1 superintendent.</p> <p>2 Q. Why?</p> <p>3 A. Because he's not a medical person.</p> <p>4 Q. So is it fair for me to assume that if the</p> <p>5 superintendent makes a recommendation based upon a</p> <p>6 perceived medical suggestion, that the Medical</p> <p>7 Advisory Committee will ignore that?</p> <p>8 A. Not necessarily. If a superintendent called</p> <p>9 and said I have somebody here who is, quote, "in a</p> <p>10 life-threatening condition," which he says here, then</p> <p>11 probably the response would be has he seen the nurse</p> <p>12 or the PA. What do they have to say about that? But</p> <p>13 we would hear that. And if he said no, then we would</p> <p>14 send somebody out to make the determination if indeed</p> <p>15 this is a life-threatening situation and the person</p> <p>16 needs to be in a different facility.</p> <p>17 Q. Do you know whether or not the inmate, in</p> <p>18 this case, Mr. Davis, was ever seen by a physician</p> <p>19 while he was at Palmer Correctional Center?</p> <p>20 A. I don't know. But I'd say that it would be</p> <p>21 unusual if he did not.</p> <p>22 Q. You would have expected --</p> <p>23 A. I would have expected, yes.</p> <p>24 On the -- on the other hand, we depend on</p> <p>25 the PAs to make the referral. We expect everybody</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I have no idea, sir. I don't know. But</p> <p>2 based on this response, the last sentence said "At the</p> <p>3 present time there is no indication that the medical</p> <p>4 and security staff at Palmer Correctional Center can</p> <p>5 not meet your essential health care needs per DOC</p> <p>6 policy..."</p> <p>7 So at this point, I think what they were</p> <p>8 saying is that the level of care in the facility is</p> <p>9 sufficient for your needs. And if the medical people</p> <p>10 are saying that, then I would imagine that's so.</p> <p>11 Q. This is the medical people on the Advisory</p> <p>12 Committee.</p> <p>13 A. On the Medical Advisory Committee.</p> <p>14 Q. Do you know whether any of those medical</p> <p>15 people on the Advisory Committee ever examined</p> <p>16 Mr. Davis?</p> <p>17 A. I do not know, but it's very possible.</p> <p>18 Because usually, the physician assistants -- we have</p> <p>19 at least one physician assistant in these meetings.</p> <p>20 Q. Okay. Is that a rotating position,</p> <p>21 physician's assistant?</p> <p>22 A. Usually when someone has a patient that is</p> <p>23 going to be seen, that person -- if he's out in the</p> <p>24 Valley, the person is sure to come on in. Usually,</p> <p>25 the physician assistants who are there are the ones</p>
<p style="text-align: right;">Page 31</p> <p>1 who's in the facility to be seen within a certain</p> <p>2 period. And after seen, the PA determines through</p> <p>3 whatever triage system they use if this person needs</p> <p>4 to go on further. But --</p> <p>5 Q. So you're going to rely upon the on-site</p> <p>6 medical staff to make a recommendation.</p> <p>7 A. Of course. Of course.</p> <p>8 Q. When a prisoner makes a grievance such as</p> <p>9 the one we have here stating that medical care has not</p> <p>10 been adequate, is there a procedure within your office</p> <p>11 to have that person examined by a medical doctor?</p> <p>12 A. I can't quote chapter and verse, but I'd say</p> <p>13 yes.</p> <p>14 Q. That's what you would expect to happen.</p> <p>15 A. Again, we would begin -- we have different</p> <p>16 levels of care. And so if a person requests to be</p> <p>17 seen, we would hope that the physician assistant --</p> <p>18 the nurse or the physician assistant would make the</p> <p>19 determination. And once the determination is made,</p> <p>20 the person would be seen. If the person could not be</p> <p>21 seen within our own system, we would refer the person</p> <p>22 out to a contract facility.</p> <p>23 Q. Do you know whether or not Mr. Davis was</p> <p>24 ever seen by a medical doctor after filing this</p> <p>25 grievance?</p>	<p style="text-align: right;">Page 33</p> <p>1 from the Anchorage area. Because the meeting is held</p> <p>2 in Anchorage and they just come on routine.</p> <p>3 Q. Maybe I'm unclear about the process. So let</p> <p>4 me make sure that --</p> <p>5 A. Okay.</p> <p>6 Q. -- we work it through. In a situation where</p> <p>7 a medical grievance is filed from Palmer, you have a</p> <p>8 PA who is in charge on a day-to-day basis out there.</p> <p>9 A. Yes.</p> <p>10 Q. Right? So the PA in charge in Palmer would</p> <p>11 then be brought in as part of the medical review that</p> <p>12 is done as part of the grievance appeal?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. And depending what is happening, the person</p> <p>16 may or may not be there. But --</p> <p>17 Q. In the ideal world --</p> <p>18 A. In the ideal world, he's there.</p> <p>19 Q. Okay. Is it fair to assume that the</p> <p>20 identities of all people participating in the medical</p> <p>21 appeal would be noted somewhere in the records?</p> <p>22 A. Yes, it is.</p> <p>23 (Discussion off the record.)</p> <p>24 MR. MATTHEWS: If you don't mind, can we</p> <p>25 take a two-minute break?</p>

9 (Pages 30 to 33)

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1 THE WITNESS: All right.  
 2 (Brief recess.)  
 3 BY MR. MATTHEWS:  
 4 Q. Back on. While we were off the record,  
 5 Dr. Henry, you remembered the name of the other  
 6 medical director, as I understand it. Right?  
 7 A. Yes.  
 8 Q. And the name you just gave us was William  
 9 Herald?  
 10 A. Yes.  
 11 Q. And he was the other medical director in  
 12 addition to John Robertson?  
 13 A. Yes. Of course, at different times.  
 14 Q. Prior to --  
 15 A. Prior to, yes.  
 16 Q. Is it safe to say that you have no specific  
 17 memory at this point of Mr. Davis' grievance appeal?  
 18 A. That's correct.  
 19 Q. Or the underlying medical conditions?  
 20 A. That's correct.  
 21 Q. Or the reasons why his appeal was denied?  
 22 A. That's correct.  
 23 Q. Or the reasons why it took from June 27th  
 24 until September 5th to deny the appeal?  
 25 A. That's correct.

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1 Q. That time period, June 27th through  
 2 September 5th, is outside the parameters of your  
 3 Department policy, right?  
 4 A. It would be, yes.  
 5 Q. Thirty days is what's specified in the  
 6 policies?  
 7 A. Don't remember.  
 8 Q. Okay. But 60 plus would be outside?  
 9 A. On, yes, definitely.  
 10 Q. Does that give you any indication as to  
 11 whether Mr. Davis' appeal was complex? Or can you  
 12 give us any insight as to why there was a delay?  
 13 A. No, sir. I can't.  
 14 Q. Were some grievance appeals delayed simply  
 15 because of backlog?  
 16 A. Could have.  
 17 Q. Were some appeals delayed because they  
 18 presented complicated questions?  
 19 A. I -- I wouldn't say so, no.  
 20 Q. Mr. Davis had an implanted defibrillator.  
 21 Were you aware of that?  
 22 A. After reading this, I became aware of it,  
 23 yes.  
 24 Q. Do you know whether or not there were other  
 25 prisoners in the system with implanted defibrillators?

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1 A. No, I do not know, sir.  
 2 Q. Do you know whether or not that was a unique  
 3 situation for the Department --  
 4 A. It was.  
 5 Q. -- at the time?  
 6 A. At that time it was.  
 7 Q. Do you know whether or not Mr. Davis  
 8 required special care because of the fact that he had  
 9 an implanted defibrillator?  
 10 A. I do not know the medical care surrounding  
 11 the defibrillator. I don't know.  
 12 Q. Would you expect that he would have had  
 13 special needs?  
 14 A. I would say yes.  
 15 Q. Do you know whether or not there were any  
 16 steps taken at Palmer Correctional Center to assess  
 17 whether or not Mr. Davis had special needs because of  
 18 his implanted defibrillator?  
 19 A. Well, I would have expected that the staff,  
 20 the medical staff, knowing this would keep him on  
 21 their radar. On the other hand, I have known persons  
 22 with defibrillators. And they require whatever --  
 23 whatever service they require, they would make that  
 24 known. So again, if he made his needs known and the  
 25 staff determined that they could handle that situation

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1 within the context of Palmer, then I would have to go  
 2 along with the staff.  
 3 Q. Do you know whether or not the staff at  
 4 Palmer when Mr. Davis was there had any training to  
 5 know what special needs Mr. Davis might have because  
 6 of his implanted defibrillator?  
 7 A. I do not know the answer to that. But I  
 8 would say that any trained medical person should know.  
 9 Q. Including a PA?  
 10 A. Including the PA, yes.  
 11 Q. Do you know what medications Mr. Davis was  
 12 taking while he was at Palmer?  
 13 A. No, sir.  
 14 Q. Do you know anything about the medical --  
 15 strike that.  
 16 Do you know anything about the dispensing of  
 17 medications at Palmer while Mr. Davis was there?  
 18 A. Well, back in '02, the policy for dispensing  
 19 medication, it would be -- would be in place would be  
 20 the same.  
 21 Q. As I understand it, Mr. Davis had a number  
 22 of medications, some of which were listed as  
 23 keep-on-person or KOP.  
 24 A. Uh-huh.  
 25 Q. And that would be consistent with Department

10 (Pages 34 to 37)

Exhibit 17  
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1 A. Thinking further about it, I would say that  
 2 they do not have access to medical chart, yeah.  
 3 Q. At Palmer during 2002, there was typically a  
 4 time of day when there was no medical personnel  
 5 on-site, correct?  
 6 A. Yes.  
 7 Q. There was no 24-hour coverage at Palmer,  
 8 right?  
 9 A. At this particular time, I don't know. At  
 10 some time we had 24-hour coverage. I don't know  
 11 when -- when -- at what point it ceased, but --  
 12 Q. Was that during your tenure as health care  
 13 administrator?  
 14 A. It could have been.  
 15 Q. Do you know whether it was --  
 16 A. The reason why I'm saying it could have  
 17 been, I remember our going through a reorganization of  
 18 the Department. We did a study. And the study  
 19 indicated that some facilities did not need 24-hour  
 20 care, nursing care or medical care. And so I -- I  
 21 can't recall if Palmer was one of those facilities,  
 22 but it could have been.  
 23 Q. Do you remember when that study was done?  
 24 A. I would say about 2001 or thereabout.  
 25 Q. Do you remember what the study was called?

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1 A. No, sir.  
 2 Q. Do you remember who did it?  
 3 A. It was done by an outside consultant, person  
 4 from the State of Washington.  
 5 Q. Do you remember who the consultant was?  
 6 A. No, I don't.  
 7 Q. It was commissioned by the Department of  
 8 Corrections?  
 9 A. Yes, indeed.  
 10 Q. Up until the time of that study, is it  
 11 correct to say that there was 24-hour medical coverage  
 12 at Palmer?  
 13 A. I don't know. But I would guess that there  
 14 was. I don't know.  
 15 Q. There was a point in time where there was  
 16 24-hour coverage at Palmer; is that your memory?  
 17 A. I can't say for certain that there was.  
 18 Q. In any event, as a result of this study,  
 19 24-hour coverage was eliminated at some facilities?  
 20 A. That's correct.  
 21 Q. But you're not sure which ones.  
 22 A. Not sure which one, off the top of my head.  
 23 Q. As I understand it, Department policy  
 24 requires each inmate to get at least an initial  
 25 medical screen when they come into State custody.

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1 A. Yes.  
 2 Q. And that was true when you were health care  
 3 administrator?  
 4 A. Yes.  
 5 Q. Is there a policy that requires an inmate to  
 6 receive a medical screen when they are transferred  
 7 between facilities?  
 8 A. I think if -- yes. However, if one screen  
 9 was done just prior to the transfer being made, it  
 10 would not be necessary, if that makes sense. I think  
 11 that's what it was. But again, that's trusting my  
 12 memory here.  
 13 Q. I understand it's some years ago. We talked  
 14 earlier about COs and whether or not they have access  
 15 to medical charts.  
 16 A. Yes.  
 17 Q. Is it Department policy that all medical  
 18 examinations of an inmate would be recorded in the  
 19 chart?  
 20 A. Oh, yes.  
 21 Q. So any kind of lab work, measurements,  
 22 testing of that sort that would be done on an inmate  
 23 should be recorded in the chart?  
 24 A. Yes.  
 25 Q. So if blood pressure readings were taken,

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1 those should be recorded in an inmate's chart,  
 2 correct?  
 3 A. Yes.  
 4 Q. As health care administrator, you would  
 5 expect to see detailed records of all treatment by the  
 6 medical staff at Palmer for any inmate, right?  
 7 A. Yes, sir.  
 8 Q. If an inmate at Palmer was being treated for  
 9 high blood pressure with an implanted defibrillator,  
 10 would you expect to see regular blood pressure  
 11 measurements in the chart?  
 12 A. I'm sorry. Would you restate your question,  
 13 please?  
 14 Q. If an inmate was being treated for high  
 15 blood pressure, medicated for high blood pressure and  
 16 had an implanted defibrillator, would you expect to  
 17 see regular measurements of that inmate's blood  
 18 pressure?  
 19 A. Initially, I would expect to see regular  
 20 measurement. And as the blood pressure stabilized, I  
 21 would see less and less frequent measurement. That's  
 22 what I would expect. But again, I don't look at those  
 23 things since I'm not the medical director or health  
 24 personnel. But just a common sense approach would say  
 25 that to me.

12 (Pages 42 to 45)

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1 Q. With an inmate such as Mr. Davis who has  
2 filed a grievance relating to his medical care, once  
3 that grievance is filed -- sorry -- once that appeal  
4 is filed on June 27th, is there any Department policy  
5 that requires him to be examined medically?  
6 A. No.  
7 Q. If an inmate such as Mr. Davis has raised  
8 questions about his -- the adequacy of his medical  
9 care, would you expect to see follow-up?  
10 A. I would expect to see that, yes. And based  
11 on that follow-up, some decision would be made whether  
12 or not there is any merit to his appeal. Or if  
13 there's merit to it, then the follow-up would lead  
14 into the right direction.  
15 Q. When the response to the appeal is such as  
16 we see in Exhibit 1 --  
17 A. Yes.  
18 Q. -- that medical staff at the facility is  
19 adequate for your medical needs, would you expect to  
20 see follow-up care at the facility to be certain that  
21 his medical needs were being met?  
22 A. Yeah. Consistent with this finding, I would  
23 set them to have follow-up. But, you know, whether  
24 the follow-up is a week or two weeks or whatever would  
25 be determined by the medical staff, based on the

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1 person's need. I can't make a judgment to say whether  
2 or not this follow-up was adequate or inadequate or  
3 what.  
4 Q. In any event, you would expect to see  
5 follow-up.  
6 A. Yes. If a person has a need in a facility,  
7 I expect to see follow-up.  
8 Q. Let me ask you this: Because I really don't  
9 want to waste your time. If I were to ask you  
10 individual questions about Mr. Davis' medical care,  
11 I'm assuming you're going to tell me you don't know  
12 anything about it.  
13 A. And that will be correct, yes.  
14 Q. So asking you to look at documents relating  
15 to specific stages of his medical care, it's not  
16 something that you could tell me anything about.  
17 A. I could not.  
18 Q. Are you familiar generally with the forms  
19 that are used by the Department for medical care?  
20 A. I used to be.  
21 Q. Let me ask you this: Let me show you a  
22 document which has been previously Bates numbered by  
23 the Department with the numbers two, three and four.  
24 And my question relates to really the form for the  
25 physical examination that appears at page four. It

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1 says continuation on back. And I don't have a back.  
2 Do you know what would appear?  
3 MS. KAMM: Oh.  
4 THE WITNESS: It says continuation what?  
5 BY MR. MATTHEWS:  
6 Q. Continuation on the back.  
7 A. Oh, continuation on back. Oh, I'd say that  
8 if it said that, then there was a back side to this  
9 form which wasn't copied.  
10 Q. Do you know what the back side --  
11 A. No, sir.  
12 Q. -- would contain?  
13 MS. KAMM: I'm sorry. Which number are we  
14 at? Which one are we looking at that says continued  
15 on back?  
16 MR. MATTHEWS: Four.  
17 THE WITNESS: Number four.  
18 MS. KAMM: Let me see.  
19 MR. MATTHEWS: Incidentally, I go from page  
20 four to page six in my copy.  
21 MS. KAMM: So do I.  
22 MR. MATTHEWS: Then we're all consistent.  
23 THE WITNESS: What's page six? Is it more  
24 of the same?  
25 MS. KAMM: This is page six right here.

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1 THE WITNESS: Oh, yeah. So we -- no, this  
2 is page four. Oh, this is six.  
3 MS. KAMM: Yes.  
4 THE WITNESS: This is the -- a different --  
5 chest wall, hearing, lung, 23. Interesting.  
6 MS. KAMM: You gave him four. Okay.  
7 MR. MATTHEWS: Yes.  
8 THE WITNESS: This is yours.  
9 MS. KAMM: Thank you.  
10 BY MR. MATTHEWS:  
11 Q. Any memory of what would have been on the  
12 back side of that form?  
13 A. I know at one time we had a diagram of a  
14 person. And a person could identify on this chart  
15 what -- what areas of the anatomy was involved. So I  
16 don't know if that was it. But I can't say.  
17 Q. Was it part of your responsibility as health  
18 care administrator to look at quality of care issues  
19 from a medical standpoint within the system?  
20 A. Yeah. I -- I would request such a thing to  
21 be done. For example, with the medical director, we  
22 would ask that from time to time a given facility or  
23 given charts be pulled just to determine the quality  
24 of care that had been delivered, the consistency of  
25 care that was being done.

13 (Pages 46 to 49)

Exhibit 14  
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